

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-05-IH-2010
)	
)	Acct. No. 201032080007
Next-G Communication, Inc.)	
)	FRN No. 0010717874

CONSENT DECREE

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission” or “FCC”) and Next-G Communication, Inc. (“Next-G” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Next-G violated section 276 of the Communications Act of 1934, as amended (the “Act”),¹ and sections 64.1300, 64.1310(a), and 64.1320 of the Commission’s Rules,² relating to payphone compensation, and section 214 of the Act³ and section 63.18 of the Commission’s Rules,⁴ relating to the provision of international telecommunications service.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 11.
 - (f) “Effective Date” means the date on which the Commission releases the Adopting Order.
 - (g) “Investigation” means the investigation commenced by the Bureau’s November 15, 2005 Letter of Inquiry⁵ regarding, among other issues, whether Next-G violated section 276 of

¹ 47 U.S.C. § 276.

² 47 C.F.R. §§ 64.1300, 64.1310(a), and 64.1320.

³ 47 U.S.C. § 214(a).

⁴ 47 C.F.R. § 63.18.

⁵ See Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Zee Ar, President, Next-G Communications, Inc. d/b/a U.S. Comm (Nov. 15, 2005).

the Act⁶ and sections 64.1300, 64.1310, and 64.1320 of the Commission's rules,⁷ relating to payphone compensation.

- (h) "Next-G" or the "Company" means Next-G Communication, Inc. and its predecessors-in-interest and successors-in-interest.
- (i) "Parties" means Next-G Communication, Inc. and the Bureau.
- (j) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (k) "Telecommunications" or "Telecommunications service" means telecommunications or telecommunications service as defined in sections 3(43) and 3(46) of the Act, respectively, 47 U.S.C. §§ 153(43), 153(46).

II. BACKGROUND

3. Pursuant to section 276 of the Act,⁸ the Commission has developed rules to ensure that all payphone service providers ("PSPs") are fairly compensated for each and every completed intrastate and interstate call using their payphones.⁹ As a general matter, the rules require "Completing Carriers" to compensate PSPs for completed payphone calls at a rate agreed upon by contract,¹⁰ or, in the absence of such an agreement, "at a per-call rate of \$.494."¹¹ A "Completing Carrier" is defined as "a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call."¹²

4. Unless the PSP consents to an alternative compensation arrangement, Completing Carriers must compensate PSPs in accordance with procedures specified in sections 64.1310(a) and 64.1320 of the Commission's rules.¹³ Those procedures require that the Completing Carrier, among other things: (1) establish a call tracking system that accurately tracks all toll-free payphone calls to completion;¹⁴ (2)

⁶ 47 U.S.C. § 276.

⁷ 47 C.F.R. §§ 64.1300, 64.1310(a), and 64.1320.

⁸ 47 U.S.C. § 276(b)(1)(A).

⁹ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996) (subsequent history omitted) ("*First Payphone Order*"). The Commission's current rules were adopted in 2003, and subsequently modified in 2004. See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Report and Order, 18 FCC Rcd 19975 (2003) (subsequent history omitted) ("*Second Payphone Order*"); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 19 FCC Rcd 21457 (2004) (subsequent history omitted) ("*Payphone Reconsideration Order*").

¹⁰ 47 C.F.R. § 64.1300(b).

¹¹ *Id.* at § 64.1300(d).

¹² *Id.* at § 64.1300(a).

¹³ *Id.* at §§ 64.1310(a), 64.1320.

¹⁴ *Id.* at § 64.1310(a)(1).

engage a third-party auditor who will verify that the call tracking system complies with the Commission's requirements, prepare a "System Audit Report" to be filed with the Commission, and verify the Completing Carrier's continuing compliance with the requirements annually thereafter;¹⁵ and (3) on a quarterly basis, compensate all PSPs for each completed coinless access code or subscriber toll-free payphone call, timely submit to each PSP a call data report that contains certain information about the calls the Completing Carrier completed from that PSP's payphone(s) during the quarter, and provide a sworn statement from its chief financial officer to each PSP certifying that the compensation paid for a quarter is accurate and complete.¹⁶

5. Section 214(a) of the Act prohibits any carrier from constructing, extending, or operating any line, and from engaging in transmission through any such line, "unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity" require, or will require, the construction, extension, or operation of the line.¹⁷ Section 63.18 of the Commission's rules requires that any carrier seeking to provide international telecommunications service apply for and obtain an international section 214 authorization prior to providing such service.¹⁸ The application requirement applies to carriers that resell the service of another authorized carrier.¹⁹

6. Next-G is a Texas-based telecommunications carrier that has provided pre-paid calling cards and international termination services since at least 2002.²⁰ On November 15, 2005 and February 28, 2006, the Bureau sent Next-G letters of inquiry ("LOIs") seeking certain documents and information related to the company's compliance with the payphone compensation rules.²¹ On December 21, 2005 and March 27, 2006, respectively, Next-G responded to the LOIs.²² At the request of Commission staff, Next-G thereafter supplemented the record several times regarding its compliance with the Commission's payphone compensation rules.²³ Next-G and the Bureau have executed several tolling agreements to date.²⁴

¹⁵ *Id.* at § 64.1320.

¹⁶ *Id.* at § 64.1310(a)(2)-(4).

¹⁷ 47 U.S.C. § 214(a).

¹⁸ 47 C.F.R. § 63.18.

¹⁹ *Id.*, at § 63.18(e)(2).

²⁰ Letter from Jonathan S. Marashlian, The Helein Law Group, P.C., counsel for Next-G, to Hillary DeNigro and Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC (Dec. 21, 2005), at 2 ("December 2005 LOI Response").

²¹ Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Zee Ar, President, Next-G Communications, Inc. d/b/a U.S. Comm (Nov. 15, 2005); Letter from Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Jonathan S. Marashlian, The Helein Law Group, P.C., counsel for Next-G (Feb. 28, 2006).

²² *See* December 2005 LOI Response; Letter from Jonathan S. Marashlian, The Helein Law Group, P.C., counsel for Next-G, to Hillary DeNigro and Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC (Mar. 27, 2006), at 2.

²³ *See, e.g.*, Letter from Jonathan S. Marashlian, The Helein Law Group, P.C., counsel for Next-G, to Hillary DeNigro and Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC (May 5, 2006); Letter from Jonathan S. Marashlian, The Helein Law Group, P.C., counsel for Next-G, to Hillary DeNigro and Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC (July 14, 2006); Letter from Jonathan S. Marashlian, The Helein Law Group, P.C., counsel for Next-G, to Hillary DeNigro and Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC (Nov. 8, 2006); Letter from Jonathan S. Marashlian, Helein & Marashlian, LLC, counsel for Next-G, to Hillary DeNigro and Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC (Jan. 3, 2007); Letter from

III. TERMS OF AGREEMENT

7. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

8. **Jurisdiction.** Next-G agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date: Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Bureau Order. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, Next-G agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Next-G concerning the

Jonathan S. Marashlian, Helein & Marashlian, LLC, counsel for Next-G, to Hillary DeNigro and Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC (Nov. 9, 2007); Letter from Jonathan S. Marashlian, Helein & Marashlian, LLC, counsel for Next-G, to Hillary DeNigro and Raelynn Tibayan Remy, Investigations and Hearings Division, Enforcement Bureau, FCC (Nov. 19, 2007); Letter from Jonathan S. Marashlian, Helein & Marashlian, LLC, counsel for Next-G, to Trent Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, (Jan. 29, 2008); Letter from Jonathan S. Marashlian, Helein & Marashlian, LLC, counsel for Next-G, to Vickie Robinson and Chin Yoo, Investigations and Hearings Division, Enforcement Bureau, FCC (Dec. 29, 2008).

²⁴ Tolling Agreement, File No. EB-05-IH-2010, executed on June 29, 2006, by and between Christopher Olsen, Deputy Chief, Enforcement Bureau, FCC (on behalf of Kris Monteith, Chief, Enforcement Bureau, FCC) and Jonathan Marashlian, Counsel to Next-G; Tolling Agreement Extension, File No. EB-05-IH-2010, executed on September 19, 2006, by and between Gene Fullano, Deputy Chief, Enforcement Bureau, FCC (on behalf of Kris Monteith, Chief, Enforcement Bureau, FCC), and Jonathan Marashlian, Counsel to Next-G; Tolling Agreement Extension, File No. EB-05-IH-2010, executed on December 13, 2006, by and between Kris Monteith, Chief, Enforcement Bureau, FCC, and Jonathan Marashlian, Counsel to Next-G; Tolling Agreement Extension, File No. EB-05-IH-2010, executed on March 16, 2007, by and between Kris Monteith, Chief, Enforcement Bureau, FCC, and Jonathan Marashlian, Counsel to Next-G; Tolling Agreement Extension, File No. EB-05-IH-2010, executed on June 7, 2007, by and between Hillary S. DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, and Ted A. Cox, Counsel to Next-G; Tolling Agreement Extension, File No. EB-05-IH-2010, executed on June 12, 2009, by and between Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, and Jonathan Marashlian, Counsel to Next-G; Tolling Agreement Extension, File No. EB-05-IH-2010, executed on August 14, 2009, by and between Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, and Jonathan Marashlian, Counsel to Next-G; Tolling Agreement Extension, File No. EB-05-IH-2010, executed on October 8, 2009, by and between Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, and Jonathan Marashlian, Counsel to Next-G.

matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Next-G with respect to Next-G's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier.

11. **Compliance Plan.** For purposes of settling the matters set forth herein, Next-G agrees to create within thirty (30) calendar days from the Effective Date a Compliance Plan related to future compliance with the provisions of the Act, the Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

- (a) **"Red Light" Status.** Next-G will submit all outstanding payments due to the Commission and file such documents as are necessary to remove Next-G's "red light" status²⁵ within thirty (30) days of the Effective Date.
- (b) **International Section 214 Authorization.** Next-G will take all steps necessary within sixty (60) days of the Effective Date to obtain section 214 authority for its provision of international telecommunications service.
- (c) **Compliance Officer.** Next-G will designate a Compliance Officer that will be responsible for implementing and administering the Compliance Plan and serve as the point of contact for all FCC compliance matters.
- (d) **Compliance Training Program.** The Compliance Officer will be responsible for ensuring that any Next-G employee who engages in activities related to the FCC's payphone compensation and section 214 authorization requirements receives FCC compliance training. Such training will be completed within ninety (90) days of the Effective Date and any new employees will receive training within thirty (30) days of their employment.
- (e) **Review and Monitoring.** Next-G will review its FCC Compliance Training Program annually to ensure that it is maintained in a proper manner and continues to address the objectives set forth therein.
- (f) **Compliance Reports.** Next-G will file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Next-G, stating that the officer has personal knowledge that Next-G has established operating procedures intended to ensure compliance with this Consent Decree and outlining within that statement the basis for the officer's compliance certification. All compliance reports shall be submitted to Division Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.
- (g) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire thirty-six (36) months after the Effective Date.

²⁵ See 47 C.F.R. § 1.1910.

12. **Section 208 Complaints: Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against Next-G or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Next-G of the Act, the Rules, or any Commission Order.

13. **Voluntary Contribution.** Next-G agrees that it will make a voluntary contribution to the United States Treasury in the amount of two hundred fifty thousand dollars (\$250,000.00), with an initial payment of thirty thousand dollars (\$30,000.00) and the remainder paid in thirty-six (36) equal monthly installments of six thousand one hundred eleven dollars and twelve cents (\$6,111.12). The initial payment of \$30,000.00 shall be made within thirty (30) days after the Effective Date, and the monthly installments thereafter shall be made by the thirtieth (30th) day of each month following payment of the initial payment. Each payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. Next-G will also send an electronic notification within forty-eight (48) hours of the date of said payment to Chin Yoo at Chin.Yoo@fcc.gov.

14. **Waivers.** Next-G waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues the Adopting Order without change, addition, modification, or deletion. Next-G shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Next-G nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Next-G shall waive any statutory right to a trial *de novo*. Next-G hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

15. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Next-G does not expressly consent) that provision will be superseded by such Commission Rule or Order.

16. **Successors and Assigns.** Next-G agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act, the Rules, and the Commission's Orders.

18. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

19. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

20. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Michele Ellison
Chief, Enforcement Bureau

Date

Zulfiqar AR
Vice President
Next-G Communication, Inc.

Date